You are the sole appellate judge in the nation of Pacifica, a new nation-state that has emerged from the west coast of the United States with no previous court decisions of its own. You have been confronted with two challenging cases and must now decide which of the two you will spend your limited judicial energies on – you are departing on a very important summer golf cruise in two weeks and thus want to be finished in order to make launch. Once you choose your case, you will need to consider the evidence before you as it stands in the documents below, since appellate judges cannot look behind the record of the lower court’s findings of fact.

Pacifica is a relatively poor country, though it pays its judges well, so you do not have the benefit of any law clerks. The one clerk on staff at the Pacifica courthouse prepared the following synopses of the trial record, depositions and evidence to make your decision-making process easier – this synopsis takes the place of the “facts” portion of your opinion, saving you the time of writing it out again (your opinion can simply refer back to this page of facts as “attached”). In addition, Pacifica’s internet access is poor and you can’t count on your Lexis-Nexis/Westlaw subscriptions to be paid up. Given your limited time, you’ll rely on a handful of key cases that you have tucked away in a file from an undergrad class you once took, along with some articles dealing with law, economics and public policy that you’ve collected over the years. You should use these cases and materials as the main sources of precedent in defining Pacifica’s jurisprudential course for whichever case you issue an opinion on in the next two weeks.

 Since Pacifica is such a new and struggling nation, the politicians who appointed you to this position made it clear that your court opinion should be substantive enough to make a mark on the jurisprudence of other jurisdictions and help generate respect and attention in legal scholarship circles within and outside the country (including in our very special friend country, the U.S.). This means that, whichever case you decide to issue a decision on, you should write an opinion of at least six to seven pages, double-spaced, and make sure you have cited your sources in a clear and consistent way. In this opinion, you will want to focus on assessing (rather than just identifying) approximately 4-6 different legal issues that are raised by the case you are considering. One approach might be to organize your opinion around the broad areas of contract, property and tort, and then assess the key issues within each area with reference to the main questions, debates and considerations that relate to your decision. You do not need to address every issue in each case – there are far more issues built into the hypotheticals than could fit in one paper – you do need to select the most important legal issues raised by the cases and identify the specific rationales and precedents for your opinion on each of those issues. For the other issues that you do not focus on but which you still feel you have to address, you may do what many judges do – dismiss those issues individually with a well-chosen sentence/reference to precedent, while spending more space unpacking each of the more critical questions you have chosen.

Finally, many political figures in Pacifica are interested in questions of justice, economic efficiency and public policy, so your decision should explicitly engage with these areas of thought and apply them to the case at hand. Your final opinion should indirectly address the legislature and public of Pacifica with regard to each of these concerns, which may include what the role of courts should be in answering major questions in each area and what signals the court can send about the development of law, economics and public policy. And – enjoy your cruise!

Case 1: Abercrombie v. Fitch Magdalen

Abercrombie and Juniper Fitch are songwriting partners. Magdalen plays piano and Juniper is guitarist and lead singer. They were friends for many years, and then one night, while out enjoying pizza and a beer at their favorite local dive, they decided they should formally write music together and Juniper (who had attended law school for a year before dropping out) wrote the following out on a restaurant napkin, which they each signed with a flourish:

“Magdalen Abercrombie and Juniper Fitch hereby totally agree to write amazing songs and sing them together for the next fifty years. We will split everything we ever make from these amazing songs 50/50, and we will trade off on top billing when we start performing at giant concert halls. Plus, we will never sell out to Ticketmaster, because they’re evil. Each of us hereby and forthwith promises to bring our own special musical genius and talents to our writing and performances and to spend at least two hours every weekday on musical work. Magdalen promises the use of her house for our sessions and Juniper promises to take care of managing the business side of things. If one of us ever leaves the partnership to go solo they will owe the other one $10,000,000 or 50% of their solo career profits for life, whichever is more, because that would suck.” The next day, they went to the mall together and had the napkin framed, hanging it in Magdalen’s house. For the next five years, they wrote music together and met every day at Magdalen’s house for at least two hours. Gradually, they began to have some local success, until finally one of the songs Juniper had written on their current album-in-progress began to get played regularly on a local station and they were asked to perform at several small concert venues. Approached by a large record label after one of these shows, Juniper negotiated a deal for their first joint album release, guaranteeing both of them royalties on the album that would be split 50/50. Unbeknownst to Magdalen, Juniper also agreed to a second solo album contract with an extremely generous signing bonus with the same company. A few days later, while writing a song together, Magdalen was feeling irritated at Juniper’s domination of the spotlight at their concert the night before. Magdalen started to strum the melody to a Taylor Swift song (knowing that Juniper viewed Taylor as her mortal enemy) and Juniper, short-tempered as well as playful, took the discount “Quick ‘n Dirty” brand guitar string she had just removed from the box and slapped the back of Magdalen’s hand repeatedly with it to get her to stop. Magdalen, very thin-skinned both figuratively and literally, watched in horror as her hand began to bleed slightly from where the string hit her. Juniper apologized profusely and Magdalen accepted, permitting Juniper to bring her a band aid and glasses of scotch for the rest of the evening in penance. The next day, however, Magdalen woke up to find her hand was red, hot and swollen and she felt feverish and nauseous. A visit to the ER confirmed that she had necrotizing fasciitis (flesh-eating bacteria) in her injured hand, and doctors put her on an aggressive regimen of antiobiotics and finally had to perform surgery to amputate her infected hand. The doctors suspect the bacteria entered Magdalen’s skin directly from the guitar string. Unfortunately for Magdalen, she did not have health insurance, so she owes $160,000 in medical expenses for the surgery and an artificial hand. Juniper, guilt-ridden after Magdalen’s tragedy, continued to come to her house every day to work on songs for their next joint album for months, though Magdalen refused to join her in the studio and ignored her phone calls and e-mails. A few months later, Juniper’s first solo album was released to huge acclaim, reaching platinum within two weeks. Juniper’s record label arranged a year-long concert tour around the world through Ticketmaster, and Juniper was able to launch her own fragrance line and was signed as the advertising face for a major cosmetics company. Within the first year of her solo career, Juniper had made approximately $4,000,000. Magdalen and Juniper’s joint album, meanwhile, had gone largely unpromoted and forgotten, and Juniper did not sing any songs from it on her concert tour.

Magdalen, meanwhile, though she found playing her beloved piano all but impossible, began singing covers of their jointly-written songs at local bars. When this proved to be only moderately popular, she wrote scathing parody versions of Juniper’s more successful solo songs and found a record label to provide her with backup musicians and release the parodies as an album. Magdalen posed on the cover in similar clothing and the same “deep, soulful” pose that Juniper had for her solo album cover. While Juniper’s album was named “Mad Girl,” Magdalen’s parody was named “Fad Girl.” Juniper’s record label quickly issued an injunction demanding that Magdalen cease production of the album.

Magdalen is suing Juniper in tort for $160,000 in compensatory damages for assault and reckless endangerment, and $10,000,000 in pain and suffering and lost future earnings potential due to the loss of her hand. As an alternative, Magdalen is also suing the “Quick ‘n Dirty” guitar string company for manufacturing a defective product. “Quick ‘n Dirty” manufactures not only guitar strings, but playground equipment, genetically engineered chickens, and land mines – all told, their annual profits exceed $80,000,000,000. At the trial level, it was revealed that their strings are ¼ thinner and sharper than the standard guitar strings and they have had 20,000 claims of cuts and lacerations (which they have settled or refused) out of 120,000,000 sets of strings sold in the last year. On the stand, a “Quick ‘n Dirty” representative acknowledged that when used as intended, their strings were sharp enough to cut human skin. Magdalen is asking for $160,000 in compensatory damages and $10,000,000 (one month of guitar string sales) in punitive damages from “Quick ‘n Dirty.” In addition, Magdalen sued Juniper for breach of contract, demanding that Juniper be held to the liquidated-damages clause of $10,000,000 in their original contract for her solo career choice. Juniper counter-sued for copyright infringement, claiming that Magdalen’s parody interfered with her copyright and demanding injunctive relief to prevent the album’s release, and in the alternative, for breach of contract by Magdalen for leaving the partnership first. The lower court granted injunctive relief to Juniper on her copyright claim and $80,000 each in compensatory damages from both Juniper and “Quick ‘n Dirty” to Magdalen for her tort claim, dismissing the breach of contract claims. All parties appealed.

Case 2: Kardashian v. Kardashian

Bernard and Arturo Kardashian are brothers. Their mother, Janet, owned a house with a small detached cottage in a declining neighborhood in the town of New Cascade. As the neighborhood emptied of residents, Janet had purchased additional lots to add to her land, so that the house now resides on several acres and includes a few low-income rental properties from which Janet derived her money. She split her wealth, $400,000, between the brothers with Arturo as trustee for Bernard. The property, called Pinkacre, was left to Arturo (the eldest) with the stipulation that Bernard had a right during his lifetime to reside in the cottage on the land without payment of rent (a life tenancy). Bernard, who never graduated from high school, has had trouble holding down a job because he loathes being indoors. He prefers to spend time walking in the woods near the house, painting, and playing with the family dog, Bluebell. Bernard found Bluebell as a puppy in the woods and bottle-fed her until she grew to a large animal, roughly the size and appearance of a wolf. Bernard eventually began to use the cottage as an unofficial animal shelter, taking in every stray dog, cat and ferret he could from the streets of New Cascade. Since the economic downturn New Cascade has been especially hard hit, such that entire areas of the town were filled with deserted, abandoned houses, empty lots and stray pets in need of food and shelter. Bernard lived modestly, spending most of his nights sleeping with Bluebell in a tree house he had built on the edge of the woods nearest the cottage so he could look at the stars. He named the tree Eleanor, and kept the simple tree house scrupulously tidy, though the cottage itself was somewhat in disrepair as more animals came to join the family, now numbering over 50. Arturo realized last year that the six paintings Bernard had done as a teenager and given as gifts to Janet, which were still hanging in the main house of Pinkacre, could be worth a great deal of money. Several of Arturo’s wealthy dinner guests offered him sums over $1,000,000 for different paintings at various times, expressing special interest in the “nouveau naturalist” style of the works. Arturo finally went to Bernard with cash in hand and asked him to sign the following contract. Arturo told Bernard that he was worried about him, that he enjoyed looking at Bernard’s paintings on the walls, and that this way Bernard could always have enough resources to take care of his animals (though Arturo secretly felt the animals were messy and troublesome). Both signed the agreement. “I, Arturo Kardashian, hereby pay Bernard Kardashian the sum of $10,000 cash in exchange for his promise to paint twelve more paintings in the style of the six paintings currently at Pinkacre in the next year and deliver them to my possession by December 31. Thereafter, I will continue to pay him $10,000 per year on the condition that he continues to produce acceptable paintings on average once a month and deliver them to my possession.” The town of New Cascade has recently decided to turn the neighborhood where Pinkacre sits into a combined urban farm/animal refuge under the supervision of a local company specializing in these projects called “Urb-Farm”. But Arturo had the land surveyed upon Janet’s death and the surveyors reported that there were several deposits of Unobtanium, a rare and valuable mineral, under the wooded area of the property. Arturo signed a lease agreement with a mining company, Silverado, granting him 20% of the proceeds from the Unobtanium they would extract from the land. Silverado anticipated profits of at least $10,000,000. Knowing Bernard would be distressed at the devastation the mine would bring to the woods, Arturo ensured that Bernard was at the Humane Society when the workers began digging, and when Bernard later asked about the noise he told him the property needed repairs to the sewer and gas lines.